

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2917 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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JAYESHKUMAR CHHAKKADDAS SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR JAYANT PATEL for Petitioners

MR TH SOMPURA, AGP for the respondents

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 28/02/97

ORAL JUDGEMENT

Rule. Learned Govt. Counsel Mr.T.H.Sompura,  
waives the service of Rule.

The petition concerns the land bearing Survey No.1012 admeasuring 0-acre-29-gunthas-9 sq.mtrs. which would be equivalent to 1,18,270 sq.mtrs. situated at village Adalaj. The necessary permission for the NA use came to be granted under the orders dated February 11, 1982. One of the principal contentions in the orders

granting the NA use permission was that, the land holder was required to commence the construction work within a period of three months from the date of the orders and was required to complete the same within a period of three years. It appears that the above said condition was not complied with and, therefore, there was a show cause notice calling upon the land holder to show cause as to why the said permission should not be cancelled. Ultimately, under the orders dated March 21, 1988, available at Annexure.A, the NA permission came to be cancelled. The matter was carried before the Government, of course, unsuccessfully, by filing the revision application, which came to be dismissed, under the orders dated January 31, 1989/February 27, 1989, available at Annexure.B. It is in this fact-situation that the petitioners are before me, challenging the above said orders. It shall have to be pointed out that, the predecessor-in-title of the petitioner no.1 had asked for the extension, but instead of deciding the application for the extension, the show cause notice which form the basis of the above said two orders came to be issued and served upon the predecessor-in-title of the petitioner no.1.

The principal contention coming from learned Counsel Mr.Jayant Patel for the petitioners is that, the time frame granted in the orders granting NA permission cannot be said to be so sacrosanct as to require a strict compliance and that a view has been taken consistently by this Court that, merely because the construction is not completed within the stipulated time frame, the extreme measure of cancellation of the permission should not be resorted to. The reliance is also being placed by the learned Counsel for the petitioners on certain decisions rendered by this Court in which a view has been taken that, a further time frame could be fixed by the Court after the cancellation of the orders of the authorities under which the NA permission has been set at naught and that the petitioner no.1, who had purchased the land, should be called upon to pay appropriate penalty.

Learned Counsel Mr.Patel for the petitioners is factually right when he makes the above said submission. A reference can be made to the unreported decision rendered by a learned Single Judge of this Court in Special Civil Application No. 871 of 1989, decided on October 5, 1995. In this decision, a view has been taken that, less drastic action under Section 66 of the Code would be to levy the penalty for the non-compliance with the conditions of the NA permission. Ultimately, the Court has taken the view that, it would be proper if this

Court imposes the penalty on the petitioners for the non-compliance with the vital condition in the NA permission. In the result, ultimately, the orders of the State Government confirming the orders of the DDO, Gandhinagar, regarding the cancellation of the NA permission came to be quashed and set aside. The petitioners were directed to pay the penalty of Rs.50,000/- for the breach of the aforesaid condition of the NA permission. They were also required to complete the construction within a period of three years from the date of the orders.

Drawing a parity from the above said decision of this Court, it would be appropriate if the present petition is allowed and the orders of cancellation confirmed upto to the Government are quashed and set aside after the imposition of a just penalty.

I order accordingly. The said orders are hereby quashed and set aside. The petitioners are granted a further period of three years with effect from the date of the present orders subject to the condition that they pay an amount of Rs.2,50,000/- (Rupees Two Lakh Fifty thousand only) by way of Demand Draft payable to the Secretary, Revenue Department, State of Gujarat, within a period of six weeks hereof. Rule is made absolute to the above said extent, with no order as to costs. Direct service is permitted.

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